IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

ELLEN JOHNSTON PLAINTIFF

V. CIVIL ACTION NO.: 2:07CV42 WAP-EMB

ONE AMERICA PRODUCTIONS, INC.,
EVERYMAN PICTURES, TWENTIETH
CENTURY FOX FILM CORPORATION

DEFENDANTS

ANSWER AND DEFENSES OF DEFENDANTS ONE AMERICA PRODUCTIONS, INC. AND TWENTIETH CENTURY-FOX FILM CORPORATION

Defendants One America Productions, Inc. and Twentieth Century Fox Film Corporation ("Defendants"),[1] hereby submits their Answer and Defenses to Plaintiff's Complaint as follows:

FIRST DEFENSE

The Complaint fails to state a claim against One America Productions, Inc. or a claim against Twentieth Century Fox Film Corporation upon which relief can be granted.

SECOND DEFENSE – ANSWER

1. On information and belief, Defendants admit the allegations of ¶1.

2. One America Production, Inc. admits it is a California corporation with its principal place of business in Los Angeles, California. Twentieth Century Fox Film Corporation admits it is a Delaware corporation with its principal place of business in Los Angeles, California. Defendants deny the remaining allegations of ¶2.

[1] Plaintiff has previously voluntarily dismissed Defendant Everyman Productions, Inc.. See Notice of Dismissal (June 1, 2007); Docket 6.

Dockets.Justia.com

3. Defendants admit that the movie *Borat* was shown in theaters across the United States, including in the Northern District of Mississippi and that the film now is available for purchase in the Northern District of Mississippi on DVD. Defendants deny the remaining allegations of ¶ 3.

4. Denied.

5. Denied.

6. Defendants admit Plaintiff did not sign a written "release to appear in the film *Borat*." Defendants deny the remaining allegations contained in ¶ 6.

7. Denied.

With respect to the unnumbered paragraph immediately following ¶ 7, Defendant denies this paragraph *in toto*, and specifically denies that Plaintiff is entitled to the relief requested therein or to any relief whatsoever.

THIRD DEFENSE

The free speech, free press, free exercise or establishment clauses of the First Amendment of the United States Constitution prevent Plaintiff from recovering on any privacy claim that is based upon the alleged mocking or holding up to scorn or ridicule her religion or its practices, that of her fellow believers, or her own religious beliefs or practices.

FOURTH DEFENSE

Plaintiff cannot recover on any privacy claim that is based upon the alleged mocking or holding up to scorn or ridicule her fellow religious believers or their religious beliefs or practices or her own religious beliefs or practices.

FIFTH DEFENSE

The subject matter of the movie *Borat* is a matter of legitimate public interest to which the constitutional or actual malice standard of *Time, Inc. v. Hill,* 385 US 374 (1967), applies or, in the alternative, a standard of care greater than that of negligence should apply because the subject matter is privileged under the First Amendment.

SIXTH DEFENSE

The incidental use of Plaintiff's image or likeness which is taken from and based on her participation in a public meeting is protected by the First Amendment and is therefore not actionable.

SEVENTH DEFENSE

Plaintiff was aware of, and consented to, the filming of her participation in a church service open to the public.

EIGHTH DEFENSE

The film *Borat* is an expressive work of communicative speech that is entitled to the full protection of the First Amendment.

NINTH DEFENSE

The use of Plaintiff's image or likeness in the film *Borat* is protected under the substantial truth doctrine of Mississippi law.

TENTH DEFENSE

The use of Plaintiff's image or likeness in the film *Borat* is protected under the fair comment doctrine of Mississippi law.

ELEVENTH DEFENSE

Defendant invokes the provisions of Miss. Code § 85-5-7 (1972) on apportionment of fault as to all parties and non-parties who may be jointly liable for the Plaintiff's alleged injuries.

TWELTH DEFENSE

The imposition of punitive damages under the circumstances of this case would have a chilling effect upon freedom of expression on issues of legitimate public interest, and therefore, such damages are unconstitutional under the First and Fourteenth Amendments of the United States Constitution.

THIRTEENTH DEFENSE

The imposition of punitive damages under the circumstances of this case would have a chilling effect upon freedom of expression on issues of legitimate public interest, and therefore such damages are unconstitutional under Sections 13 & 14 of the Mississippi Constitution of 1890.

FOURTEENTH DEFENSE

Mississippi laws and procedures concerning punitive damages are violative of the due process clause and equal protection clause of the Fourteenth Amendment of the United States Constitution and Article III, Section 14, and other provisions of the Mississippi Constitution of 1890. The absence of clearly defined, objective criteria addressing the availability and amount of punitive damages which are capable of reasonable application precludes submission of punitive damages to the trier of fact. Mississippi's system of awarding punitive damages is further invalidated by the potential for multiple punitive damages awards for the same conduct. The constitutional invalidity of Mississippi's current punitive damages system denies Defendants the right to due process, equal protection under the law, and adequate access to the State and Federal courts of Mississippi.

WHEREFORE, having fully answered the allegations of the Complaint, Defendants One America Productions, Inc. and Twentieth Century Fox Film Corporation request that this Court dismiss the Complaint, at Plaintiff's cost, and for such other general or specific relief as may be appropriate.

THIS, the 5th day of September, 2007.

Respectfully submitted,

DEFENDANTS ONE AMERICA PRODUCTIONS, INC. AND TWENTIETH CENTURY FOX FILM CORPORATION

s/ John C. Henegan
JOHN C. HENEGAN, MB No. 2286
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CERTIFICATE OF SERVICE

I, John C. Henegan, one of the attorneys for Defendants, hereby certify that I have this day filed the above and foregoing ANSWER AND DEFENSES OF DEFENDANTS ONE AMERICA PRODUCTION, INC. AND TWENTIETH CENTURY-FOX FILM CORPORATION with the Clerk of the Court via the Court's ECF System which served a true copy upon the following via the Court's ECF system:

William O. Luckett, Jr.
wol@lucketttyner.com

ATTORNEY FOR PLAINTIFF

SO CERTIFIED, this the 5th day of September, 2007.

s/ John C. Henegan
JOHN C. HENEGAN

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